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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
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BRENDA BURNS

Arizona Corporation Commission

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DOCKETED

AZ CORP COMMISSION
DOCKET CONTROL

APR 18 2011

DOCKETED BY

IN THE MATTER OF THE INVESTIGATION OF
THE FAILURE OF BELLEMONT WATER
COMPANY, AN ARIZONA PUBLIC SERVICE
CORPORATION, AND BELLEMONT WATER
COMPANY SHAREHOLDERS BRAD NESS,
GLORIA NESS, ERIK NESS, DIANAH NESS (AKA
DIANA NESS), OPERATING AS AN ARIZONA
PUBLIC SERVICE CORPORATION IN FACT, TO
COMPLY WITH ARIZONA STATUTES AND
COMMISSION RULES AND REGULATIONS.

DOCKET NO. W-02526A-10-0499

**MOTION FOR PRELIMINARY
INJUNCTION**

The Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff")
hereby requests that a preliminary injunction be issued:

1. enjoining Bellemont Water Company ("BWC" or "the Company") from allowing
Brad Ness, Gloria Ness, Erik Ness, or Dianah Ness (AKA Diana Ness) access to
Company funds and bank accounts until further order of the Commission.
2. enjoining Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness from accessing all
Company revenues and bank accounts until further order of the Commission.

On December 16, 2010, Staff filed a Complaint alleging that:

1. BWC violated A.R.S. § 40-301(B), A.R.S. § 40-302(A), A.R.S. § 40-202(L),
Commission Decision Nos. 70482 and 71868, A.R.S. § 40-204, and A.A.C. R14-2-
411(D)(4).
2. Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness, operating as a public service
corporation in fact, violated A.R.S. §§ 40-301(B) and 40-302(A).
3. Brad Ness, operating as a public service corporation in fact, has violated A.R.S. § 40-
202(L) and Commission Decision Nos. 70482 and 71868.

...

...

1 On April 8, 2011, Staff filed an Amended Complaint alleging that:

- 2 1. BWC violated A.R.S. § 40-301(B), A.R.S. § 40-302(A), A.R.S. § 40-202(L),
3 Commission Decision Nos. 70482 and 71868, A.R.S. § 40-204, and A.A.C. R14-2-
4 411(D)(4).
- 5 2. Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness, operating as a public service
6 corporation in fact, violated A.R.S. §§ 40-301(B) and 40-302(A).
- 7 3. Brad Ness, operating as a public service corporation in fact, has violated A.R.S. § 40-
8 202(L) and Commission Decision Nos. 70482 and 71868.
- 9 4. Erik Ness, operating as a public service corporation in fact, has violated A.R.S. § 40-
10 202(L) and Commission Decision No. 71868.

11 In order to prevent further use of BWC revenues for shareholders' personal expenses and further
12 violation of applicable statutes, Commission orders, and Commission rules, Staff requests that a
13 preliminary injunction be issued.

14 Klaudia Ness, BWC Secretary and employee, brought the violations alleged in Staff's
15 complaint to the Commission's attention and has cooperated fully with Staff through the course of the
16 investigation. Staff believes Klaudia Ness is capable of managing BWC and ensuring that the
17 Company does not further violate applicable Commission statutes, rules, and orders. However, at the
18 February 8, 2011 procedural conference, Erik Ness and Elliot Ness alleged that Klaudia Ness had
19 sole access to the standpipe account and had not been depositing monies obtained from the standpipe
20 service meter into the appropriate bank account. Then, on February 17, 2011, Erik Ness docketed a
21 letter stating that "there has been a misunderstanding regarding the standpipe." The letter went on to
22 clarify that Klaudia Ness had not maintained possession of the standpipe meter since July 13, 2010.
23 Staff's investigation indicates that Klaudia Ness is capable of managing the company, including the
24 standpipe meter, and most importantly, willing to follow Commission statutes, rules, and orders.
25 However, if it is determined that Klaudia Ness is incapable of managing the company's accounts,
26 Staff would alternatively recommend that an interim manager be appointed.

27 ...

28 ...

1 **I. THE COMMISSION HAS JURISDICTION OVER BRAD NESS, GLORIA NESS,**
2 **ERIK NESS, AND DIANAH NESS.**

3 The Commission has jurisdiction over both a public service corporation and individuals who
4 operate a public utility which is not a corporation. *Van Dyke v. Geary*, 244 U.S. 39, 45, 37 S.Ct. 483,
5 485 (U.S.1917).¹

6 The corporate veil may be pierced where "the corporation is the alter ego or business conduit
7 of a person, and when to observe the corporation would work an injustice." *Deutsche Credit Corp. v.*
8 *Case Power & Equip. Co.*, 179 Ariz. 155, 160, 876 P.2d 1190, 1195 (Ct. App. 1994). "The alter ego
9 status is said to exist where there is such a unity of interest and ownership that the separate
10 personalities of the corporation and the owners cease to exist." *Deutsche Credit Corp.*, 179 Ariz. 155
11 at 160, 876 P.2d at 1195 (citing *Dietel v. Day*, 16 Ariz. App. 206, 492 P.2d 455 (1972)); *Standage v.*
12 *Standage*, 147 Ariz. 473, 476, 711 P.2d 612, 615 (Ct. App. 1985); *State v. Angelo*, 166 Ariz. 24, 27,
13 800 P.2d 11, 14 (Ct. App. 1990). Alter ego status is evidenced by: "failure to maintain formalities of
14 separate corporate existence; . . . commingling of personal and corporate funds; diversion of
15 corporate property for shareholders personal use; . . . [and] intermixing of shareholders' actions with
16 those of the corporation[.]" *Deutsche Credit Corp.*, 179 Ariz. at 160, 876 P.2d at 1195.

17 Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness have failed to maintain the formalities of
18 a separate corporate existence by using BWC revenues for personal expenses, including payments of
19 individual personal debt owed from the purchase of BWC shares.² These payments were completely
20 unrelated to the necessary expenses of the Company.³ Similarly, Brad Ness, Gloria Ness, Erik Ness,
21 and Dianah Ness have also commingled personal and corporate funds and diverted Company
22 revenues for personal use by using Company revenues to pay personal debt.⁴ Brad Ness' use of
23 standpipe meter revenue for personal legal expenses related to the foreclosure action and original
24 stock purchase, violated Commission orders, failed to maintain the formalities of a separate corporate
25

26 ¹ The U.S. Supreme Court based its ruling on this issue on the Arizona Constitution, but deemed the ruling further
27 supported by the Arizona legislature's adoption of the Public Service Corporations Act which included the terms
28 'persons' in defining public water companies. The relevant portions of the Public Service Corporations Act have been
amended and cannot be relied on in this case.

² Staff Report at 2-8.

³ Staff Report at 5.

⁴ Staff Report at 5-8.

1 existence, commingled personal and corporate funds, diverted corporate property for his personal use,
2 and intermixed his actions with those of the Company.⁵

3 In this instance, justice particularly demands that the corporate form be disregarded in order to
4 reach the individual BWC family shareholders named and corporate officers named in the complaint.
5 Here, restricted BWC revenue was used, in violation of Commission orders, to pay for their personal
6 ownership in the company. Commission jurisdiction over the individuals responsible for violating
7 Commission orders, rules, and statutes is warranted in this case.

8 **II. PRELIMINARY INJUNCTION.**

9 In Arizona, “[a] party seeking a preliminary injunction traditionally must establish four
10 criteria: (1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury if the
11 requested relief is not granted, (3) a balance of hardships favoring that party, and (4) public policy
12 favoring a grant of the injunction.” *Ariz. Ass’n of Providers For Persons With Disabilities*, 223 Ariz.
13 6, 219 P.3d 216, 221 (Ct. App. 2009). “To meet this burden, the moving party may establish either 1)
14 probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious
15 questions and that ‘the balance of hardships tip sharply’ in his favor.” *Shoen v. Shoen*, 167 Ariz. 58,
16 63, 804 P.2d 787, 792 (Ct. App., 1990). As noted by the Arizona Supreme Court, the factors are
17 considered on a sliding scale such that “[t]he greater and less reparable the harm, the less the showing
18 of a strong likelihood of success on the merits need be. Conversely, if the likelihood of success on
19 the merits is weak, the showing of irreparable harm must be stronger.” *Smith v. Ariz. Citizens Clean*
20 *Elections Comm’n*, 212 Ariz. 407, 410-411, 132 P.3d 1187, 1190-1191 (2006).

21 Commission Decision Nos. 70482 and 71868 require that “[a]ll revenue collected from the
22 standpipe service shall be deposited in a separate interest bearing account and such funds shall be
23 used exclusively for the design, approval and construction of a new water source[.]” Using standpipe
24 revenues for personal attorney’s fees and payments to Pioneer Title related to the original stock
25 purchase, Brad Ness used standpipe revenues for purposes other than the “design, approval and
26 construction of a new water source” in direct violation of Commission Decision Nos. 70482 and
27 71868. Further, Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness caused BWC to incur
28

⁵ Staff Report at 5-8.

1 significant long term debt without commission approval. This debt continues to be paid out of the
2 Company's limited revenues and is placing the Company in a precarious financial and operational
3 position. All four factors weigh in favor of granting the preliminary injunctions.

4 A. **There is a strong likelihood that the Commission will find BWC, Brad Ness,**
5 **Gloria Ness, Erik Ness, and Dianah Ness to have violated all of the statutes,**
6 **Commission rules, and Commission decisions alleged in the Complaint.**

7 There is a strong likelihood that the Commission will find BWC, Brad Ness, Gloria Ness,
8 Erik Ness, and Dianah Ness to have violated A.R.S. § 40-301(B) and A.R.S. § 40-302(A). As noted
9 in the attached Staff Report and Exhibits, Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness
10 caused BWC to incur long term debt without Commission approval in the form of a loan from Steven
11 and Janet Adams by signing the loan documents on behalf of BWC.⁶

12 Likewise, there is a strong likelihood that the Commission will find that Brad Ness, Erik
13 Ness, and BWC violated A.R.S. § 40-202(L), Commission Decision No. 70482, and Commission
14 Decision No. 71868. From July 23, 2010, to November 29, 2010, Brad Ness had sole access to the
15 standpipe meter.⁷ From December 1, 2010, to February 1, 2011, Erik Ness maintained sole access to
16 the standpipe meter.⁸ Brad Ness admitted to Staff that he used standpipe revenue to pay attorney's
17 fees for litigation that is unrelated to the design, approval, and construction of a new water source.⁹
18 Brad Ness used approximately \$21,000 of standpipe revenue for personal expenses and attorney's
19 fees related to litigation unrelated to the design, approval and construction of a new water source.¹⁰
20 Staff requested that Brad Ness voluntarily cease from accessing Company accounts, including the
21 standpipe service, and he refused.¹¹ Furthermore, Erik Ness, as the new BWC President, continues to
22 use standpipe revenue in a manner that violates Commission Decision 71868; approximately \$5,000
23 from December 1, 2010 to February 1, 2011.¹² Significant amounts of standpipe revenue have not
24 been deposited into the separate interest bearing account as required by Commission decision
25 71868.¹³ The information presented in the Staff Report and exhibits presents a strong likelihood that

26 ⁶ Staff Report at 4-5.

27 ⁷ Staff Report at 6.

28 ⁸ Staff Report 6.

⁹ Staff Report Ex. 2, Affidavit of Alfonso Amezcua.

¹⁰ Staff Report at 6.

¹¹ Staff Report Ex. 2. Affidavit of Alfonso Amezcua.

¹² Staff Report at 6.

¹³ Staff Report at 6.

1 the Commission will find BWC, Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness to have
2 violated the statutes, rules, and Commission decisions alleged in the complaint.

3 **B. There is a great possibility of irreparable injury to the Company and further**
4 **violation of Commission orders if this motion for a preliminary injunction is not**
5 **granted.**

6 BWC and certain Ness Family Shareholders have already demonstrated their disregard for
7 applicable statutes, Commission rules, and Commission orders by entering into a loan for \$108,000
8 without Commission approval, clearly violating A.R.S. § 40-302(A). Even more worrisome, this
9 loan was used to pay the refinanced debt owed on the original purchase of BWC shares. From
10 December 17, 2007, to September 23, 2009, approximately \$16,590.90 of BWC funds were used to
11 make payments on certain Ness family members' personal indebtedness related to purchase of BWC
12 stock in 2006.¹⁴ The risk of irreparable injury is particularly great because the Company's financial
13 health is being put at risk to pay for the personal liabilities of its shareholders. Not only is the
14 Company violating Commission rules by entering into long term loans without Commission
15 approval, it is doing so at the risk of the Company's financial health.¹⁵

16 Further Brad Ness and Erik Ness' disregard for Commission Decision Nos. 70482 and 71868
17 presents a great possibility of irreparable injury if they are not preliminarily enjoined from accessing
18 all Company accounts. In Decision No. 69673, the Company was ordered to discontinue standpipe
19 service due to a water shortage. In Docket No. W-02526A-08-0078, the Company's 2008 permanent
20 rate application, Staff recommended that the Company's standpipe service not be reinstated due to
21 ongoing concerns regarding groundwater availability.¹⁶ Specifically, the Engineering Report stated,

22 Staff recommends that this service not be reinstated until a more reliable source of
23 water is found. Staff is not opposed to reconsidering the re-instatement of
24 standpipe service if in the future the Company performs an engineering study.
25 The engineering study would have to show, to Staff's satisfaction, that
26 Bellemont's water source has improved to a level that enables it to reliably meet
27 the demands of both its metered and standpipe customers.¹⁷

28 ¹⁴ Staff Report at 4.

¹⁵ Staff Report at 9.

¹⁶ Docket No. W-02526A-08-0078 Staff Report, Staff Report of Crystal Brown at 10.

¹⁷ Docket No. W-02526A-08-0078 Staff Report, Attachment A (Engineering Report) at 11.

1 Decision 70482, however, reinstated the Company's standpipe service tariff subject to the following
2 conditions designed to ensure an adequate water supply and to enable to Company to finance a new
3 water source in the future:

- 4 a. The Company shall record the water level in each of its storage
tanks at least twice daily;
- 5 b. Standpipe service shall be immediately discontinued if combined
6 water in the storage tanks is less than 60 percent of capacity for at
least 72 consecutive hours or less than 25 percent of capacity for at
7 least 24 consecutive hours;
- 8 c. If standpipe service is discontinued per the above conditions:
 - 9 i. the Company shall telephonically notify the Commission's
Utilities Division Consumer Services Section within 12
hours,
 - 10 ii. the Company shall docket such notice within 72 hours, and
 - 11 iii. the standpipe service shall not be reinstated without further
order of the Commission.
- 12 d. All revenue collected from the standpipe service shall be deposited
in a separate interest bearing account and such funds shall be used
13 exclusively for the design, approval and construction of a new
water source; and
- 14 e. The Company shall submit, to Docket Control as a compliance
item in this docket, each January (beginning in January 2009) and
15 July the daily water logs of the storage monitoring for the previous
six months and a cumulative accounting of all the Standpipe
16 Service revue indicating how much money was collected, how
much interest was earned, and a detailed description of any
17 expenditures from that account.

18 Due to similar concerns over the Company's continued water supply and use of standpipe meter
19 revenues, Commission Decision No. 71868 placed identical conditions on Company's standpipe
20 meter tariff.

21 Staff has serious concerns that if Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness are not
22 prevented from accessing the standpipe meter service, BWC funds will continue to be used contrary
23 to Commission orders and further hinder the Company's ability to construct a new well or other
24 water source in the future.¹⁸ The requested preliminary injunctions would serve to prevent further
25 violation of Commission orders and further degradation of the Company's financial health.

26 ...

27 ...

28

¹⁸ Staff Report at 6.

1 **C. The balance of hardships favors the granting of the preliminary injunctions in**
2 **this matter.**

3 The hardships to BWC, Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness are non-existent,
4 if not minimal. Staff's requests for preliminary injunctions are based on:

- 5 1. evidence showing BWC funds have been used in a manner inconsistent with A.R.S. §
6 40-202(L) as well as Commission Decision Nos. 70482 and 71868; and
- 7 2. evidence that Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness caused BWC to
8 incur unauthorized long term debt for the purpose of satisfying their personal
9 indebtedness related to the original purchase of BWC shares.

10 An injunction preventing improper use of BWC funds does not present any hardship to Brad Ness,
11 Erik Ness, Gloria Ness, or Dianah Ness. On the other hand, if the preliminary injunction is not
12 granted, and BWC funds continue to be used for unauthorized purposes, the Company's financial
13 health could be seriously threatened.¹⁹ Likewise, if the injunction is not granted and standpipe
14 revenues continue to be used for unauthorized purposes, the Company will likely be unable to pay for
15 the development and construction of a new water source in the future.²⁰ Brad Ness, Gloria Ness, Erik
16 Ness, and Dianah Ness will suffer little to no hardship if they are temporarily denied access to the
17 Company's funds and bank accounts.

18 **D. Public policy favors the granting of the requested preliminary injunction in this**
19 **matter.**

20 Public policy favors granting the preliminary injunction requested because it will ensure that
21 the Company's financial health is maintained and that Company funds will not be used for
22 inappropriate purposes. Commission Decision Nos. 70482 and 71868 requiring the standpipe
23 revenues to be set aside specifically for the design and construction of a new water source are in the
24 public interest because they were designed to ensure the Company's ability to continue to provide
25 safe and adequate water supply to its customers. The Commission authorization requirements
26 contained in A.R.S. §§ 40-301(B) and 40-302(A) serve to prevent utilities, such as BWC, from
27 issuing indebtedness that could be detrimental to the financial health of the utility and that serves no
28 utility purpose. It is highly improbable that the Commission would have authorized the long term

¹⁹ Staff Report at 9.

²⁰ Staff Report at 6.

1 debt incurred by BWC to pay for the debt associated with the purchase of individual shares by the
2 Ness family. That the BWC revenues continue to be used to pay the unauthorized loan further
3 highlights the necessity of the preliminary injunction.

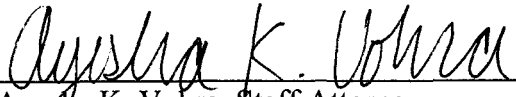
4 **III. CONCLUSION.**

5 Staff hereby respectfully requests that a preliminary injunction be issued:

- 6 1. enjoining the Company from allowing Brad Ness, Gloria Ness, Erik Ness, or Dianah
7 Ness (AKA Diana Ness) access to Company funds and bank accounts until further
8 order of the Commission.
- 9 2. enjoining Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness from accessing all
10 Company revenues and bank accounts until further order of the Commission.

11 Staff respectfully requests that the request for a preliminary injunction be addressed at the hearing
12 scheduled for May 3, 2011. Through Gerald Becker's staff report and the attached affidavit of Al
13 Amezuca, there is sufficient factual evidence to support this motion for a preliminary injunction. For
14 the convenience of the Administrative Law Judge, a proposed order is attached.

15 RESPECTFULLY SUBMITTED this 18th day of April, 2011.

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18 
19 Ayesha K. Vohra, Staff Attorney
20 Bridget A. Humphrey, Staff Attorney
21 Legal Division
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007
25 (602) 542-6521

26 Original and thirteen (13) copies of
27 the foregoing were filed this
28 18th day of April, 2011 with:

26 Docket Control
27 Arizona Corporation Commission
28 1200 West Washington Street
Phoenix, Arizona 85007

1 Copies of the foregoing were mailed
2 this 19th day of April, 2010 to:

3 Bellemont Water Company
4 P.O. Box 31176
5 Flagstaff, Arizona 86003

6 Brad Ness
7 Gloria Ness
8 Erik Ness
9 Dianah Ness
10 3960 N. Pinal Street
11 Kingman, Arizona 86409

12 Elliot Ness
13 Klaudia Ness
14 7350 Hutton Ranch Rd.
15 Flagstaff, Arizona 86004

16 Mary Keller Wong
17 Estate of George Wong
18 10476 W. Harmon
19 Peoria, Arizona 85345

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BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
Chairman

BOB STUMP
Commissioner

SANDRA D. KENNEDY
Commissioner

PAUL NEWMAN
Commissioner

BRENDA BURNS
Commissioner

IN THE MATTER OF THE INVESTIGATION OF
THE FAILURE OF BELLEMONT WATER
COMPANY, AN ARIZONA PUBLIC SERVICE
CORPORATION, AND BELLEMONT WATER
COMPANY SHAREHOLDERS BRAD NESS,
GLORIA NESS, ERIK NESS, DINAH NESS (AKA
DIANA NESS), OPERATING AS AN ARIZONA
PUBLIC SERVICE CORPORATION IN FACT, TO
COMPLY WITH ARIZONA STATUTES AND
COMMISSION RULES AND REGULATIONS.

DOCKET NO. W-02526A-10-0499

DECISION NO. _____

ORDER

Open Meeting

Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. The Commission has jurisdiction to hear complaints against public service corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.
2. Bellemont Water Company ("BWC" or "Bellemont" or "Company") is a public service corporation as defined by Article XV, §2 of the Arizona Constitution and A.R.S. §§ 40-281 and -282.

3. Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness) are serving as a public service corporation in fact by virtue of their disregard for the corporate form, their use of company revenue for personal expenses, and their co-mingling of corporate and personal funds.
4. BWC, a subchapter "C" Corporation, was incorporated in Arizona in 1989.
5. BWC has operated under a certificate of convenience and necessity ("CC&N") which was originally granted in Decision No. 58079, dated November 12, 1992. The CC&N was conditioned upon compliance with Arizona law and Commission rules.
6. The Company is a Class D utility providing water service to eight metered commercial customers approximately 10 miles west of Flagstaff in Coconino County, Arizona.
7. BWC's shareholders are Brad Ness, Gloria Ness, Erik Ness, Dianah Ness (AKA Diana Ness), Elliot Ness, Klaudia Ness, and George Wong.
8. BWC's listing in the Commission State of Arizona Public Access System shows that BWC's officers are Brad Ness (President), Erik Ness (Vice President), Elliot Ness (Treasurer), and Klaudia Ness (Secretary).
9. BWC's directors are Brad Ness, Erik Ness, Elliot Ness, and Klaudia Ness.
10. BWC director and shareholder Erik Ness explained that BWC changed its officers. According to Erik Ness, the new officers are Erik Ness (President), Elliot Ness (Vice President), Gloria Ness (Treasurer), and Klaudia Ness (Secretary). This change of officers is not yet reflected in the Company's Corporations Division filings.
11. At the August 24, 2010 Arizona Corporation Commission ("Commission") Open Meeting, the Commission directed the Arizona Corporation Commission Staff ("Staff") to investigate Klaudia Ness' allegations that BWC funds had been misused.
12. On December 16, 2010 Staff filed a Complaint alleging that BWC, Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness) violated A.R.S. § 40-301(B), § 40-302(A), § 40-202(L), § 40-204, Commission Decision Nos. 70482 and 71868, as well as A.A.C. R14-2-411.D.4.

- 1 13. On April 18, 2011, Staff filed an Amended Complaint including additional allegations
2 that Erik Ness had violated A.R.S. § 40-202(L) and Commission Decision No. 71868.
- 3 14. The Amended Complaint requested a preliminary injunction “to enjoin the Company
4 from allowing Brad Ness, Gloria Ness, Erik Ness, or Dianah Ness (AKA Diana Ness)
5 access to Company funds and bank accounts.”¹ The Complaint additionally requested
6 a preliminary injunction “to enjoin Brad Ness, Gloria Ness, Erik Ness, or Dianah Ness
7 (AKA Diana Ness) from accessing Company funds and bank accounts.”²
- 8 15. On April 15, 2011, Staff filed a Staff Report providing the factual basis for the alleged
9 violations.
- 10 16. On April 18, 2011, Staff filed a Motion for a Preliminary Injunction again requesting
11 that the aforementioned preliminary injunction be issued.
- 12 17. There is a strong likelihood that the Commission will find BWC, Brad Ness, Gloria
13 Ness, Erik Ness, and Dianah Ness to have violated all of the statutes, Commission
14 rules, and Commission decisions alleged in the Complaint.
- 15 18. There is a great possibility of irreparable injury and further violation of Commission
16 orders if this motion for a preliminary injunction is not granted.
- 17 19. The balance of hardships favors the granting of the preliminary injunction in this
18 matter.
- 19 20. Public policy favors the granting of the requested preliminary injunction in this matter.

CONCLUSIONS OF LAW

- 21 21. BWC is a public service corporation pursuant to Article XV of the Arizona
22 Constitution, A.R.S. §§ 40-281 and 40-282.
- 23 22. Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness) are serving as
24 a public service corporation in fact by virtue of their disregard for the corporate form,
25 their use of company revenue for personal expenses, and their co-mingling of
26 corporate and personal funds.

¹ Docket No. W-02526A-10-0499, Complaint at 9:9-10.

² Docket No. W-02526A-10-0499, Complaint at 9:13-14.

23. The Commission has jurisdiction over BWC, Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness) and the subject matter of this Complaint.

24. A preliminary injunction, as requested by Staff, is warranted in this instance and shall be issued.

ORDER

IT IS THEREFORE ORDERED that BWC is preliminarily enjoined from allowing Brad Ness, Gloria Ness, Erik Ness, or Dianah Ness (AKA Diana Ness) access to Company funds and bank accounts until further order of the Commission.

IT IS FURTHER ORDERED that Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness) are preliminarily enjoined from accessing all Company revenues and bank accounts until further order of the Commission.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

Decision No. _____

1 SERVICE LIST FOR:

2 DOCKET NO. W-02526A-10-0499

3 Brad Ness

Gloria Ness

4 Erik Ness

Dianah Ness

5 3960 N. Pinal Street

6 Kingman, Arizona 86409

7 Elliot Ness

Klaudia Ness

8 7350 Hutton Ranch Rd.

9 Flagstaff, Arizona 86004

10 BELLEMONT WATER COMPANY

P.O. Box 31176

11 Flagstaff, Arizona 86003

12 Mary Keller Wong

Estate of George Wong

13 10476 W. Harmon

14 Peoria, Arizona 85345

15 Mr. Steven M. Olea

Director, Utilities Division

16 Arizona Corporation Commission

17 1200 West Washington

Phoenix, Arizona 85007

18 Ms. Janice Alward

19 Chief, Legal Division

Arizona Corporation Commission

20 1200 West Washington

21 Phoenix, Arizona 85007

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